



EB-2013-0269

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O.1998, c.15, Schedule B;

AND IN THE MATTER OF an application by Planet Energy (Ontario) Corp. to renew its gas marketer licence GM-2008-0303.

By delegation, before: Theodore Antonopoulos

DECISION AND ORDER
December 19, 2013

Planet Energy (Ontario) Corp. ("Planet Energy") filed an application with the Ontario Energy Board (the "Board") on July 11, 2013, under section 50 of the *Ontario Energy Board Act, 1998* (the "Act") to renew its gas marketer licence.

The Board issued a Notice of Application and Hearing on July 31, 2013, inviting interventions and comments on the application. No parties responded to the Notice.

Board staff filed confidential interrogatories on August 26, 2013 and Planet Energy filed confidential responses on September 6, 2013. Board Staff filed a confidential submission on September 26, 2013. Planet Energy filed a confidential reply submission on October 10, 2013.

While I have considered the full record of this proceeding, I have referred only to those portions of the record that I consider helpful to provide context to my findings.

FINDINGS

I approve the licence application without the additional conditions proposed by Board staff, and for a term of five years.

BACKGROUND

Planet Energy is a gas marketer and electricity retailer that has been operating in Ontario since 2006. Planet Energy currently markets natural gas and retails electricity in Ontario to both low-volume and large-volume consumers. Since November 2012, Planet Energy has been operating under new management.

Gas marketers are required to comply with the Act, the *Energy Consumer Protection Act, 2010* (the "ECPA"), regulations under those Acts, and the Board's regulatory instruments that apply to their licensed business activities.

SUBMISSIONS

Board Staff submitted that the Board, in a licence application, is to consider the requirements set out in Regulation 90/99 which includes:

1. Having regard to the financial position of the applicant, the applicant can reasonably be expected to be financially responsible in the conduct of business.
2. The past conduct of the applicant affords reasonable grounds for belief that the applicant will carry on business in accordance with law and with integrity and honesty.
3. If the applicant is a corporation, the past conduct of its officers and directors affords reasonable grounds for belief that its business will be carried on in accordance with law and with integrity and honesty.
4. The applicant is not carrying on activities that are, or will be, if the applicant is licensed, in contravention of the Act or the regulations or the codes, orders or rules issued or made by the Board.

Board staff did not raise any concerns with respect to Planet Energy's financial position or technical capability.

Board staff did raise concerns with respect to the past conduct of certain key individuals at Planet Energy, and submitted that the applicant's gas marketer licence should include special conditions. Board staff stated that the past conduct of two of Planet Energy's management team is relevant to the Board's consideration of the renewal of Planet

Energy's licence.

Board staff observed that a member of Planet Energy's senior management team previously held a senior position with another retailer and marketer, Universal Energy Corporation ("Universal Energy"). At the time this individual was responsible for Universal Energy's regulatory and compliance departments, Universal Energy was the subject of an enforcement proceeding before the Board for non-compliance. Board staff also noted that another individual who currently holds the position of Director, Regulatory Affairs & Compliance, at Planet Energy, held similar positions with other retailers, including Universal Energy at the time that enforcement action was taken.

Board staff recommended that if Planet Energy's licence is granted, in order to address the applicant's ability to conduct licensed activities in accordance with all legal and regulatory requirements going forward, certain conditions be imposed in its renewed licence. The condition proposed was to require Planet Energy to provide the Board, within 3 months of the effective date of the licence, a corporate compliance program which demonstrates Planet Energy's commitment to compliance with all of its legal and regulatory obligations.

In its reply submission, the applicant argued that although the principal individuals responsible for compliance at Planet Energy were formally employed in compliance capacities by the company that was the subject of previous compliance actions, there is no evidence of personal wrongdoing by these individuals that led to that company's malfeasance.

Planet Energy also argued that the Board should consider the fact that over the one year period since these individuals took over the management of Planet Energy, the company has maintained, in its view, an exemplary compliance record. Planet Energy also set out what it is already doing with respect to improving its compliance program at page 7 of its reply submission. Specifically, the applicant initiated the following:

- Conducted a post-acquisition compliance audit of all its customer care and enrolment systems;
- Automated the issuance of cancellation notices within the prescribed time period;
- Implemented a new customer care system with full capabilities to monitor and track any and all compliance matters, customer complaints and quality assurance; and
- Implemented direct mailing, within three to five days of enrollment, of welcome

letters to new customers which include a copy of the customer's contract term and conditions.

REASONS

As indicated above, I am granting the application and not imposing any special conditions in the licence. I recognize that the past conduct of officers and directors of a corporation is relevant in considering the corporation's application for a licence. If the past conduct of the officers and directors affords reasonable grounds for belief that the business of the applicant will not be carried on in accordance with law and with integrity and honesty, denial of the application, or special conditions in the licence, would be warranted.

The evidence in this case suggests that senior management have taken steps so that Planet Energy will be able to conduct licensed activities in accordance with legal and regulatory requirements going forward. The compliance initiatives undertaken by Planet Energy, and the absence of compliance issues over the first year of Planet Energy's new management team, support this finding.

While I agree with Board staff that past conduct might in certain circumstances warrant special conditions, the evidence in this case does not support special conditions. Given the facts in this case: Planet Energy's commitment to adhere to its legal and regulatory obligations, the filing by the company of a Certificate of Compliance as per the requirement set out in section 6 of the *Code of Conduct for Gas Marketers*, the absence of compliance issues over the first year of Planet Energy's new management team, and given Board staff's powers to conduct inspections at any time, I am not prepared to attach special conditions to the licence.

For these reasons, I find that the gas marketer licence is granted for a term of five years, with standard terms and conditions.

IT IS THEREFORE ORDERED THAT:

The application for a gas marketer licence is granted, on such conditions as are contained in the attached licence.

DATED at Toronto, December 19, 2013

ONTARIO ENERGY BOARD

Original signed by

Theodore Antonopoulos
Manager, Electricity Rates